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COUNCIL OF STATES

The following Bills have been introduced in the Council of States on the 11th December, 1952:—

BILL No. VII OF 1952

A Bill to amend and codify the law relating to marriage and divorce among Hindus.

BE it enacted by Parliament as follows:—

PRELIMINARY

1. Short title and extent.—(1) This Act may be called the Hindu Marriage and Divorce Act, 1952.

(2) It extends to the whole of India except the State of Jammu and Kashmir, and applies also to Hindus domiciled in India who are outside India.

2. Application of Act.—(1) This Act applies—

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person domiciled in India who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.—The following persons are Hindus by religion within the meaning of this Act:—

(a) any illegitimate child both of whose parents are Hindus,

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged, and

(c) any person who is a convert or re-convert to the Hindu religion.

(2) The expression 'Hindu' in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in sub-section (1).

3. Definitions.—In this Act, unless the context otherwise requires.—

(a) the expressions "custom" and "usage" signify any rule which having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family;

Provided that the rule is certain and not unreasonable or opposed to public policy: and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;

(b) the expression "district court" means the principal civil court of original jurisdiction, and includes the High Court in the exercise of its ordinary original civil jurisdiction and any subordinate civil court which may be specified by the Central Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act;

(c) "full blood" and "half blood"—two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but by different wives;

(d) "uterine blood"—two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

Explanation.—In clauses (c) and (d), "ancestor" includes the father and "ancestress" the mother;

(e) "prescribed" means prescribed by rules made under this Act;

(f) (i) "*sapinda* relationship" with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation;

(ii) two persons are said to be "*sapindas*" of each other if one is a lineal ascendant of the other within the limits of *sapinda* relationship, or if they have a common lineal ascendant who is within the limits of *sapinda* relationship with reference to each of them;

(g) "degrees of prohibited relationship"—two persons are said to be within "the degrees of prohibited relationship" if one is a lineal ascendant of the other, or was the wife or husband of a lineal

ascendant or descendant of the other, or if the two are brother and sister, uncle and niece, aunt and nephew, or the children of two brothers or two sisters;

Explanation.—For the purposes of clauses (f) and (g), relationship includes---

(i) relationship by half or uterine blood as well as by full blood ;

(ii) illegitimate blood relationship as well as legitimate ;

(iii) relationship by adoption as well as by blood ;

and all terms of relationship in those clauses shall be construed accordingly.

4. Over-riding effect of Act.—Save as otherwise expressly provided in this Act—

(a) any text, rule or interpretation of Hindu law or any custom or usage in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

HINDU MARRIAGES

5. Essentials for a Hindu marriage.—A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely :—

(i) neither party has a spouse living at the time of the marriage ;

(ii) neither party is an idiot or a lunatic at the time of the marriage ;

(iii) the bridegroom has completed the age of eighteen years and the bride the age of fifteen years at the time of the marriage ;

(iv) the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two ;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two ;

(vi) where the bride has not completed the age of sixteen years, the consent of her guardian in marriage has been obtained for the marriage.

6. Guardianship in marriage.—(1) Subject to the provisions contained in any law for the time being in force relating to guardians and wards, wherever the consent of a guardian in marriage is necessary under this

Act, the persons entitled to give such consent shall be the following in the order specified hereunder, namely :—

- (1) the father ;
- (2) the mother ;
- (3) the paternal grandfather ;
- (4) the brother by full or half blood, a brother by full blood being preferred to one by half blood and as between brothers whether by full or half blood, the elder being preferred ;
- (5) the paternal uncle by full or half blood, subject to the like rules of preference as are set out in entry (4) above ;
- (6) the maternal grandfather ;
- (7) the maternal uncle, subject to the like rules of preference as are set out in entry (4) above ;
- (8) any other relative, the nearer being preferred to the more remote and as between relatives related in the same way, subject to the like rules of preference as are set out in entry (4) above.

Explanation.—In determining which of the two relatives is nearer for the purposes of entry (8) above, the test shall be, which of them is first entitled to inherit to the ward's heritable property.

(2) No person shall be entitled to act as a guardian in marriage under the provisions of this section unless such person has himself completed his or her twenty-first year.

(3) Where any person entitled to be the guardian in marriage under the foregoing provisions refuses, or is by reason of absence, disability or other cause, unable or unfit, to act as such the person next in order shall be entitled to be the guardian.

(4) Nothing in this Act shall affect the jurisdiction of a court to prohibit by injunction an intended marriage arranged by the guardian if, in the interests of the minor, the court thinks it necessary to do so.

7. Ceremonies for a Hindu marriage.—(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the *Saptapadi* (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

8. Registration of Hindu marriages.—(1) For the purpose of facilitating the proof of Hindu marriages, the State Government may, by rules,—

(a) provide for the entering of particulars relating to such marriages in such manner and under such conditions as may be prescribed in the Hindu Marriage Register kept for the purpose ;

(b) provide that the entering of such particulars shall be compulsory in the State or in such areas and in such cases as may be specified in the rules.

(2) In making any rules under clause (b) of sub-section (1), the State Government may provide that a contravention thereof shall be punishable with fine which may extend to one hundred rupees.

(3) The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee.

(4) Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry.

RESTITUTION OF CONJUGAL RIGHTS AND JUDICIAL SEPARATION

9. Restitution of conjugal rights.—(1) When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court for restitution of conjugal rights, and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

(2) Nothing shall be pleaded in answer to a petition for restitution of conjugal rights which shall not be a ground for judicial separation or for termination of marriage.

10. Judicial separation.—(1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition to the district court praying for a decree for judicial separation on the ground that the other party—

(a) has deserted the petitioner for a period of not less than two years immediately preceding the presentation of the petition ;

(b) has been guilty of such cruelty as to render it unsafe for the petitioner to live with the other party; or

(c) has, for a period of not less than one year immediately preceding the presentation of the petition, been suffering from leprosy or venereal disease; or

(d) has been continuously of unsound mind since the date of the marriage ; or

(e) has committed adultery during the marriage.

Explanation.—In this section, the expression “to desert” with its grammatical variations and cognate expressions, means to desert the other party to a marriage without reasonable cause and without the consent or against the wish of such party.

(2) Where a decree for judicial separation has been passed it shall no longer be obligatory for the petitioner to co-habit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition rescind the decree if it considers it just and reasonable to do so.

TERMINATION OF MARRIAGE

11. Petition for decree of nullity.—(1) Any marriage solemnized before the commencement of this Act may, on a petition presented by either party thereto, be declared null and void on either of the following grounds, namely:—

(a) that a former husband or wife of either party was living at the time of such marriage; or

(b) that the parties at the time of such marriage were within the degrees of prohibited relationship as defined in section 3:

Provided that no such marriage shall be declared null and void if the marriage was valid under any law, custom or usage in force at the time of such marriage.

(2) Any marriage solemnized after the commencement of this Act may, on a petition presented by either party thereto, be declared null and void on the ground that it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

12. Petition for decree of invalidity of marriage.—(1) Any marriage solemnized before the commencement of this Act may, on a petition presented by either party thereto, be declared invalid on either of the following grounds, namely:—

(a) that the respondent was impotent at the time of the marriage and continued to be so until the institution of the proceeding; or

(b) that either party is an idiot or was a lunatic at the time of the marriage:

Provided that no petition under this sub-section shall be entertained after the expiry of one year from the commencement of this Act.

(2) Any marriage solemnized after the commencement of this Act may, on a petition presented by either party thereto, be declared invalid on any of the following grounds, namely:—

(a) that the respondent was impotent at the time of the marriage and continued to be so until the institution of the proceeding; or

(b) that the marriage contravenes the condition specified in clause (ii) or clause (iii) of section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner is requisite under section 5 the consent of such guardian, was obtained by force or fraud:

Provided that no petition for declaring a marriage invalid on the ground specified in clause (c) shall be entertained if --

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(i) the petitioner has, with his or her free consent, lived with the other party to the marriage as husband and wife after the force had ceased to operate or, as the case may be, the fraud had been discovered.

13. Petition for decree of divorce.—Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either party thereto, be dissolved by a decree of divorce on any of the following grounds, namely:—

(i) that the husband is keeping a concubine or the wife has become the concubine of any other man or leads the life of a prostitute;

(ii) that either party to the marriage has ceased to be a Hindu by conversion to another religion;

(iii) that either party is incurably of unsound mind and has been continuously under treatment for a period of not less than five years preceding the presentation of the petition;

(iv) that either party has, for a period of not less than one year immediately preceding the presentation of the petition, been suffering from leprosy;

(v) that either party has not been heard of as being alive for a space of seven years or more by those persons who would naturally have heard of it, had that party been alive;

(vi) that either party has not resumed marital intercourse for a period of two years or upwards after the passing of a decree for judicial separation against the other party;

(vii) that either party has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree.

14. Rights of parties to have marriage terminated.—A petition for a declaration that a marriage is invalid or that it may be dissolved by a decree of divorce shall lie only at the instance of a party to the marriage.

Provided that where the ground for a petition for the dissolution of a marriage by a decree of divorce is that either party to the marriage has ceased to be a Hindu by conversion to another religion, the petition shall lie only at the instance of the party who continues to be a Hindu:

Provided further that no party shall be entitled to take advantage of his or her own wrong or disability for the purpose of relief

15. No petition for divorce to be presented within three years of marriage.—(1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, unless at the date of the presentation of the petition three years have elapsed since the date of the marriage:

Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented before three years have elapsed since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the

part of the respondent, but, if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the expiry of three years from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the expiration of the said three years upon the same or substantially the same facts as those proved in support of the petition so dismissed.

(2) In disposing of any application under this section for leave to present a petition for divorce before the expiration of three years from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the said three years.

16. Remarriage of divorced persons.—Where a marriage has been dissolved by a decree of divorce, and either there is no right of appeal against the decree or if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, and one year has elapsed thereafter but not sooner, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been terminated by death.

17. Consequences of termination of marriage in certain cases.—Where a marriage is declared null and void on the ground that the former husband or wife was living and it is adjudged that the subsequent marriage was contracted in good faith and that one or both of the parties fully believed that the former husband or wife was dead, or where a marriage is declared invalid, the children begotten before the decree is made shall be specified therein and shall in all respects be deemed to be, and always to have been, the legitimate children of their parents.

18. Punishment of bigamy.—Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of sections 494 and 495 of the Indian Penal Code (Act XLV of 1860) shall apply accordingly.

JURISDICTION AND PROCEDURE

19. Court to which petition should be made.—Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnized or the husband and wife reside or last resided together.

20. Contents and verification of petitions.—(1) Every petition presented under this Act shall state as distinctly as the nature of the case permits, the facts on which the claim to relief is founded and every petition for the termination of any marriage or for judicial separation shall state that there is no collusion between the petitioner and the other party to the marriage.

(2) The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in the

manner required by law for the verification of plaints, and may, at the hearing, be referred to as evidence.

21. Application of Act V of 1908.—Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908 (Act V of 1908).

22. Proceedings may be in camera.—A proceeding under this Act shall be conducted in camera if either party so desires or if the court so thinks fit to do.

23. Decree in proceeding.—In any proceeding under this Act, whether defended or not, if the court is satisfied that—

(a) any of the grounds for granting relief exists, and

(b) where the ground of the petition is adultery, the petitioner has not in any manner been accessory to or connived at or condoned the adultery, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and

(c) the petition is not presented or prosecuted in collusion with the respondent, and

(d) there has not been any unnecessary or improper delay in instituting the proceeding, and

(e) there is no other legal ground why relief should not be granted,

then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

24. Alimony, pendente lite.—Where in any proceeding under this Act, it appears to the court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the husband to pay to her the expenses of the proceeding, and monthly during the proceeding such sum as having regard to the husband's income it may seem to the court to be reasonable.

25. Permanent alimony.—(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree for the termination of any marriage or at any time subsequent thereto, on application made to it for the purpose, order that the husband shall, while the wife remains chaste and unmarried, secure to the wife for her maintenance and support, if necessary, by a charge on the husband's property, such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband's property and the conduct of the parties, shall be deemed just.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the wife in whose favour an order has been made under this section has remarried or has not remained chaste, it shall rescind the order.

26. Custody of children.—In any proceeding under this Act, the court may, from time to time, pass such *interim* orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes wherever possible, and may, after the decree, upon application by petition for the purpose, make, revoke, suspend or vary, from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or *interim* orders in case the proceeding for obtaining such decree were still pending.

27. Disposal of property.—In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.

28. Enforcement of, and appeal from, decrees and orders.—All decrees and orders made by the court in any proceeding under this Act shall be enforced in like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction are enforced, and may be appealed from under any law for the time being in force:

Provided that there shall be no appeal on the subject of costs only:

Provided further that every such appeal shall be instituted within three months after the decision appealed from shall have been pronounced.

SAVINGS AND REPEALS

29. Savings.—(1) A marriage solemnized between Hindus before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid by reason only of the fact that the parties thereto belonged to the same *gotra* or *pravara* or belonged to different castes or sub-divisions of the same caste.

(2) Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the termination of a Hindu marriage, whether solemnized before or after the commencement of this Act.

(3) Nothing contained in this Act shall affect any proceeding under any law for the time being in force for the termination of any marriage or for judicial separation pending at the date of the commencement of this Act and any such proceeding may be continued and determined as if this Act had not been passed.

(4) Nothing contained in this Act shall be deemed to affect the provisions contained in the Special Marriage Act, 1872 (III of 1872) with respect to marriages between Hindus solemnized under that Act whether before or after the commencement of this Act.

30. Repeals.—The Hindu Marriage Disabilities Removal Act, 1946 (XXVIII of 1946) and the Hindu Marriages Validity Act, 1949 (XXI of 1949) are hereby repealed.

STATEMENT OF OBJECTS AND REASONS

The Hindu Code as drafted by the Rau Committee was introduced in the Legislative Assembly in 1947 and was referred to a Select Committee of the Constituent Assembly of India (Legislative) on 9th April, 1948. The Select Committee submitted its report on the 29th August, 1948 and their revised draft was discussed at considerable length by the Provisional Parliament, but as the Bill could not be passed before the dissolution of that Parliament it now stands lapsed.

2. As stated earlier by Government, the Code is now being split up into separate parts for the purpose of facilitating discussion and passage in Parliament, and the present Bill is the first of a series of such parts and deals with marriage and divorce. The earlier Bill has now been considerably revised, one significant change being the omission of all provisions relating to civil marriages, a subject dealt with in the Special Marriage Bill now pending before the Council of States. The notes on clauses explain the various provisions contained in the Bill.

C. C. BISWAS.

NEW DELHI;

The 8th December, 1952.

Notes on Clauses

Clause 1.—The Bill, if passed, will apply to Hindus domiciled in India wherever they may be.

Clause 2.—At present, Hindu Law applies (i) to Hindus by birth, and also to Hindus by religion, that is to say, to converts and re-converts to Hinduism, (ii) to illegitimate children where both parents are Hindus, (iii) to illegitimate children where the mother is a Hindu and the children are brought up as Hindus, (iv) to Bramhos, Arya Samajists, Lingayats and to persons who may have deviated from orthodox standards of Hinduism in matters of diet and ceremonial observances and to every other person who may be regarded as a Hindu unless he can show some valid local, tribal or family custom to the contrary, and (v) to Jains, Sikhs and Buddhists. Clause 2, in effect, seeks to codify the existing law.

Clause 3.—The expression "district court" has been so defined that jurisdiction in matters relating to divorce can be vested in any subordinate civil court.

The definitions of "prohibited degrees" and "*sapinda* relationship" are on the lines of the Rau Committee's Report. As has been pointed out by that Committee, the strict rule prohibiting marriages within the limits of *sapinda* relationship as defined in the *Smritis* (seven and five degrees) have been considerably relaxed by custom and the limits have therefore been reduced to five and three degrees, as is generally recognised now. A definition of "prohibited degrees" is also necessary because there is the greatest diversity among Hindus in different parts of India as to what are the prohibited degrees for marriage. The usual rule is that the parties should not be *sapindus* of each other. Not only, however, has the *sapinda* relationship been interpreted in different ways by different authors, but the rule itself has been subjected to modification by custom. Some kind of limit has,

therefore, to be provided to prevent incestuous marriages, subject to judicially recognised customs or well-established customs which satisfy the requirements of the definition of that expression.

Clause 4 seeks to repeal all existing laws, whether in the shape of enactments or otherwise, which are inconsistent with this Bill.

Clause 5 prescribes the essential requisites for a Hindu marriage, sub-clause (i) of which introduces monogamy. Sub-clauses (iv) and (v) require that the parties should not be within the degrees of prohibited relationship or be *sapindus* of each other unless in either case there is a custom or usage modifying that rule.

Clause 6 codifies the existing law relating to persons who may act as guardians in marriage, but the mother is now given a higher place immediately after the father.

Clause 7 leaves it to the parties to choose any form of marriage, but where the form adopted includes the *saptapadi*, the marriage becomes complete when the seventh step is taken. This is in accordance with the existing law.

Clause 8.—The question whether marriages should be registrable, whether compulsorily or otherwise, is left to the discretion of the State Governments, but this clause ensures that omission to register a marriage will not render it invalid.

Clause 9 provides for restitution of conjugal rights—a right which recognised under the existing law.

Clause 10 deals with judicial separation and the main consequences which flow from a decree for judicial separation. A decree for judicial separation does not have the effect of terminating the marriage.

Clauses 11 and 12 deal with cases where a marriage is null and void and cases where a marriage is voidable at the option of either party to the marriage. Until so avoided a voidable marriage should be regarded as good for all purposes. Where a marriage is a bigamous marriage or contravenes the rule relating to prohibited degrees, the marriage is regarded as null and void from the very beginning. In other cases the marriage is rendered voidable at the option of the parties as in many other systems of law.

Clause 13 specifies the grounds on which a decree for divorce may be obtained by either party to the marriage. In particular, a decree of divorce may be obtained if there is no reconciliation between the parties within a specified period after the passing of a decree for judicial separation or if a decree for restitution of conjugal rights is not complied with within a specified period.

Clause 14.—This clause recognises the principle that where a marriage has been duly solemnized and is not void, it should not be open to any third party to question its validity.

A change in religion is not inconsistent with the continuance of conjugal love and it should therefore not be permissible for a party to the marriage to get a divorce by changing his or her religion. The right to get a divorce under this law is therefore given to the party who continues to be a Hindu as in the proviso. A somewhat similar right is given to a person

changing his religion for Christianity under the Converts Marriage Dissolution Act, 1866 under which a husband or wife who changes his or her religion for Christianity is entitled to sue the other party for restitution of conjugal rights if the other party deserts or repudiates him or her, and if after the petition the desertion is persisted in, the court may declare the marriage dissolved after following the prescribed procedure.

Clause 15.—This is based on a similar provision in section 2 of the Matrimonial Causes Act, 1950, and will ensure a fair trial being given to every marriage.

Clause 16 prescribes a time limit, as a matter of public policy, within which it shall not be lawful for divorced persons to re-marry. Similar provisions are to be found in section 57 of the Indian Divorce Act, 1869, and in section 14 of Bombay Act XXII of 1947.

Clause 17 will ensure the legitimacy of children in the case of invalid marriages and also in the case of void marriages entered into in good faith.

Clause 18 renders bigamy punishable.

Clauses 19 to 28 deal with jurisdiction and procedure and are generally based on similar provisions in the Indian Divorce Act, 1869, and in Bombay Act XXII of 1947.

Clause 29.—This clause expressly saves, *inter alia*, customs and special enactments like the Madras Marumakkattayam Act (XXII of 1933) which provide for termination of Hindu marriages in any other manner. It is also provided that marriages solemnized under the Special Marriage Act, 1872, are not affected by anything contained in this Bill.

BILL NO. VIII OF 1952

A Bill further to amend the Abducted Persons (Recovery and Restoration) Act, 1949.

BE it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Abducted Persons (Recovery and Restoration) Amendment Act, 1952.

2. Amendment of section 1, Act LXV of 1949.—In section 1 of the Abducted Persons (Recovery and Restoration) Act, 1949 (hereinafter referred to as the principal Act), for sub-section (2), the following sub-sections shall be substituted, namely:—

“(2) Section 5 extends to the whole of India, and the remaining provisions extend to the States of Punjab, Uttar Pradesh, Patiala and East Punjab States Union, Rajasthan and Delhi.

(3) This Act shall remain in force up to the 28th day of February, 1954.”

3. Substitution of new section for section 3 in Act LXV of 1949.—For section 3 of the principal Act, the following section shall be substituted, namely:—

“3. *Establishment of camps.*—(1) The Central Government may, in any State to which this Act extends, establish as many camps as it may consider necessary for the reception and temporary detention

of abducted persons, and any place established in the State before the commencement of the Abducted Persons (Recovery and Restoration) Amendment Act, 1952, for such reception and detention shall be deemed to be a camp established by the Central Government within the meaning of this section.

(2) The Central Government shall, as soon as may be practicable, notify in the Official Gazette all camps established in every State to which this Act extends.

4. Amendment of section 4, Act LXV of 1949.—In section 4 of the principal Act,—

(a) in sub-section (1), for the words “State Government”, the words “Central Government” shall be substituted;

(b) in sub-section (2), for the words “conferred by sub-section (1) any such police officer”, the words “conferred on him by this section or by section 5, any police officer” shall be substituted.

5. Substitution of new section for section 5 in Act LXV of 1949.—For section 5 of the principal Act, the following section shall be substituted, namely:—

“5. *Power to take into custody abducted persons found in territories to which the other provisions of this Act do not extend.*—Notwithstanding anything contained in the Delhi Special Police Establishment Act, 1946 (XXV of 1946), any police officer belonging to the Delhi Special Police Establishment who is specially authorised by the Central Government in this behalf may, if he has reason to believe that an abducted person has been removed from any place in any of the States specified in sub-section (2) of section 1 and that such person is residing or is to be found in any other place in India, without warrant and after securing the assistance of the officer in charge of the police station within whose jurisdiction the abducted person is believed to be residing or is to be found, enter and search the place and take into custody any such person and deliver or cause to be delivered such person to the custody of the officer in charge of the camp in the State from which the abducted person has been removed:

Provided that nothing contained in this section shall be deemed to enable any member of the Delhi Special Police Establishment to exercise any powers conferred thereby in a Part A State or a Part B State without the consent of the Government of that State.”

6. Amendment of section 7, Act LXV of 1949.—In sub-section (1) of section 7 of the principal Act, for the words “State Government”, the words “Central Government” shall be substituted.

7. Amendment of section 9, Act LXV of 1949.—In section 9 of the principal Act, for the words “the Central Government, the State Government”, the words “the Government” shall be substituted.

8. Amendment of section 10, Act LXV of 1949.—In section 10 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:—

“(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the transfer of abducted persons from one camp to another, whether within the State or without the State;

(b) the maintenance of health and good order in camps and of harmonious relations among the abducted persons detained therein ;

(c) the composition, powers and functions of, and the procedure to be followed by, the Tribunal to be constituted under section 6;

(d) the manner in which and the time within which any application for the revision of any order of the Tribunal may be made under section 6;

(e) the manner in which any abducted person may be delivered to the custody of any officer or authority under section 7, or restored to his or her relatives, or conveyed out of India by any such officer or authority.

(3) In making any rule under clause (b) of sub-section (2), the Central Government may provide that a breach thereof shall be tried and punished by the person in charge of the camp in such manner as may be prescribed in the rules:

Provided that no abducted person shall be liable to be tried in a criminal court in respect of any offence punishable under any such rule."

9. Repeal.—The Abducted Persons (Recovery and Restoration) Amendment Ordinance, 1952 (IX of 1952), is hereby repealed.

STATEMENT OF OBJECTS AND REASONS

The Abducted Persons (Recovery and Restoration) Act, 1949, under the provisions of which persons abducted during the disturbances of 1947 are being recovered, was due to expire on the 31st October, 1952. As there were still such persons to be recovered, it was considered necessary to continue the work of recovery for some time more. To extend the duration of the Act and also to further amend the Act in the light of the experience gained in its working, it was the intention of Government to introduce a Bill in Parliament. But, as Parliament was not in session at the time when the Act was about to expire, an Ordinance was promulgated on 29th October, 1952, for the purpose of extending the life of the Act, as it then stood, by a period of two months before the expiry of which a Bill on the subject could be introduced in Parliament. The present Bill, therefore, seeks to replace the Ordinance by extending the duration of the Act up to the end of February, 1954, and also makes provision for centralizing the administration of the Act.

2. Experience has shown that in several cases abductors removed their victims to States in which the Act is not in operation and therefore the recovery staff have been considerably handicapped in effecting recovery. Opportunity is, therefore, taken to amend the Act in order that the recovery

staff may be given facilities under Central control to operate in States to which this Act does not apply for effecting recovery of abducted persons who may be removed from States to which this Act applies.

ANIL K. CHANDA.

NEW DELHI;

The 9th December, 1952.

S. N. MUKERJEE,
Secretary.